SUPREME COURT OF THE UNITED STATES.

No. 424.

CHRISTOPHER ARMSTRONG, PLAINTIFF IN ERROR,

vs.

THE COMMONWEALTH OF MASSACHUSETTS.

IN ERROR TO THE SUPREME COURT OF THE COMMONWEALTH OF MASSACHUSETTS.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the superior court of the State of Massachusetts, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said superior court before you, or or some of you, being the highest court of law or equity of the said State in which a decision could be had in the suit between the Commonwealth of Massachusetts, plaintiff, and Christopher Armstrong, defendant, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity, or wherein was drawn in question the validity of a statute of, or authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Christopher Armstrong, as by his complaint appears: We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and sixty-five.

JOHN G. STETSON,
Clerk pro tem. C. C. U. S., Massachusetts District.

Writ issued July 21st, 1866.

Allowed by—

NATHAN CLIFFORD,
Ass. Jus. Sup. Court of the U. S.

I, A. F. L. Norris, make oath and say, that on the twenty-fourth day of July, A. D. 1866, at 10½ o'clock in the forenoon, filed a true and attested copy of the within writ, attested by the clerk of the circuit court within named, in the clerk's office of the superior court for criminal business, within and for the county of Middlesex and Commonwealth of Massachusetts, and also at the same time filed in

the clerk's office of said superior court for said county a copy of the bond in said cause as attested by said clerk of said circuit court.

A. F. L. NORRIS.

MIDDLESEX, *July* 24, 1866.

Subscribed and sworn to before me.

HAZEN WHITEHER,
Justice of the Peace.

MIDDLESEX, *ss:*

I hereby certify that the copies named in the foregoing affidavit were filed in the clerk's office for said county at the time therein referred.

Attest: B. F. HAM, *Clerk.*

2 The United States of America to the Commonwealth of Massachusetts, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the superior court of the Commonwealth of Massachusetts, wherein Christopher Armstrong is plaintiff in error, and you are defendant in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Nathan Clifford, justice of the Supreme Court of the United States, this 21st day of July, in the year of our Lord one thousand eight hundred and sixty-six.

NATHAN CLIFFORD,
Ass. Jus. Sup. Court of the U. S.

I hereby acknowledge that due service of the within citation has been made upon me.

CHESTER J. REED, *Att'y Gen'l.*

3 United States of America:

CIRCUIT COURT OF THE UNITED STATES, *district of Massachusetts, ss:*

To the honorable the circuit court of the United States:

Your petioner, Christopher Armstrong, of Lowell, in the county of Middlesex, in the district of Massachusetts, shows unto your honors that heretofore, to wit, on the fourth Monday of June, A. D. 1866, at Concord, in the said county of Middlesex, in said district of Massachusetts, upon an indictment in which the Commonwealth of Massachusetts was plaintiff, and your petitioner was defendant, final judgment was rendered against your petitioner in the superior court within and for the county of Middlesex, in said district, being the highest court of law or equity of the said State in which a decision could be had in said suit, as appears by the records of said superior

court hereto annexed, and made part of this petition. And your petitioner says that in the trial of said case there was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; and wherein was drawn in question the validity of a statute of, and authority under, said State, on the ground of their being repugnant to the Constitution, treaties, and laws of the United States, and the decision was in favor of such their validity: and wherein was drawn in question the construction of a clause of the Constitution and of a treaty, and statute of, and commission held under, the United States, and the decision was against the title, right, privilege, and exemption, specially set up and claimed under such clause of the said Constitution, treaty, statute, and commission, and a manifest error hath happened to the great damage of your petitioner.

Wherefore your petitioner prays that a writ of error to the Supreme Court of the United States may issue in due form of law, and he will ever pray, &c.

CHRISTOPHFR ARMSTRONG.
By his attorneys: N. RICHARDSON.
A. F. L. NORRIS.

4 *Defendant's exceptions.*

Superior court, criminal session, June term, 1866.

COMMONWEALTH OF MASSACHUSETTS
vs.
CHRISTOPHER ARMSTRONG.

MIDDLESEX, *ss:*

This was an indictment against the defendant under the chapter of the General Statutes, and together with the subsequent pleadings. may be referred to, and as made a part of these exceptions.

The court sustained the demurrer, and overruled the defendant's special plea in bar. And thereupon the plea of not guilty being entered, the jury found the defendant guilty, when the defendant, after verdict against him, and before sentence, filed in the case a motion in arrest of judgment, which may be referred to, and is made a part of these exceptions.

The court overruled the defendant's motion in arrest of judgment, and the defendant excepted to the foregoing opinions, rulings, directions, and judgments of the court, and prays that his exceptions may be allowed.

By his attorneys: A. RICHARDSON.
A. F. L. NORRIS.

The above being found conformable to the truth, is allowed.
MARCUS MORTON,
Judge of Superior Court.

Filed July 15, 1866.

5 *Motion in arrest of judgment.*

Superior court, criminal session, June term, 1866.

COMMONWEALTH OF MASSACHUSETTS
vs.
CHRISTOPHER ARMSTRONG.

MIDDLESEX, *ss:*

And now the defendant in the above-entitled cause, after verdict against him, and before sentence, comes and moves this honorable court that judgment be arrested in this case, because he says that he is a retail dealer in spirituous liquors, in the Commonwealth of Massachusetts, and as such is now engaged in business, and for that purpose, and as such retail dealer in spirituous and intoxicating liquors, he had at the time and times mentioned in said indictment and at all other times, full, complete, and perfect authority and license from the United States of America to do all the acts complained of in said indictment, which license was granted him under and by virtue of an act of Congress, and for which he paid, according to the laws of the United States, into the treasury of the United States the full sum of twenty-five dollars, which license gave him full power and authority to do all the acts in said indictment charged against him, and that he has actually paid in money a tariff or revenue duty and tax upon the same spirituous and intoxicating liquors to the government of the United States, for the keeping and selling of which he is complained of in said indictment, which duty, tariff, or tax was paid upon the said spirituous or intoxicating liquors in the same packages, and in the same form and quantity in which he sold the same, as charged in said indictment, and in no other form, or package, or quantity, and that he has done no other act, or sold any other spirituous or intoxicating liquors than such as he has paid a duty or tax upon to the government of the United States, as aforesaid; and it is nowhere alleged in said indictment, that the defendant had not at the time and times mentioned in said indictment authority or license from the United States of America to do the acts complained of in said indictment; nor is it anywhere alleged in said indictment that the defendant had not paid to the government of the United States a tariff or revenue duty, or tax upon the same spirituous and intoxicating liquors, in the same packages, and in the same form and quantity in which he sold them, for the keeping and selling of which he is complained of in said indictment.

CHRISTOPHER ARMSTRONG.
By his att'y, N. RICHARDSON,
A. F. L. NORRIS.

Filed July 18, 1866, and overruled.

6 *Demurrer to plea in bar.*

Superior court for the transaction of criminal business, June term, 1866.

COMMONWEALTH, by indictment,
vs.
CHRISTOPHER ARMSTRONG. } No. 778.

COMMONWEALTH OF MASSACHUSETTS, *Middlesex, ss*:

And now comes Isaac S. Morse, as he is district attorney for the northern district, and says that the Commonwealth aforesaid ought not to be barred from having and maintaining the said indictment against the said Christopher Armstrong, defendant, as aforesaid, by reason of anything in the plea of said defendant alleged; because he says that the said plea and the matters therein contained are not sufficient in law to bar the Commonwealth from further prosecuting the said indictment against the said defendant. And the said district attorney, among other causes of demurrer, assigns the following, to wit: that said plea is double, argumentative, and otherwise informal and insufficient; all of which the said district attorney is ready to verify.

Wherefore, for want of sufficient plea in this behalf, the said district attorney prays for judgment for the Commonwealth, and that the said defendant may plead over to the said indictment.

I. S. MORSE, *Dist. Att'y.*

And the defendant joins in demurrer.
By his attorney,

W. RICHARDSON.

Filed July 12, 1866, and sustained.

7 Superior court, criminal session, June term, 1866.

COMMONWEALTH OF MASSACHUSETTS,
vs.
CHRISTOPHER ARMSTRONG. }

COMMONWEALTH OF MASSACHUSETTS, *Middlesex, ss:*

And the defendant comes and defends the wrong and injury, when, &c., where, &c., and says that the said Commonwealth ought to be barred from having and maintaining their said indictment in this case, because he says that he had at the time and times mentioned in said indictment, and at all other times, he had full, complete, and perfect authority and license from the United States of America to do all the acts complained of in said indictment, which license was granted him under and by virtue of an act of Congress, and for which he paid, according to the laws of the United States into the treasury of the United States the full sum of twenty-five dollars, and that he has actually paid in money a tariff or revenue duty and tax upon the same spirituous and intoxicating liquors to the government of the

United States, for the keeping and selling of which he is complained of in said indictment, which duty, tariff, or tax was paid upon the said spirituous or intoxicating liquors in the same packages, and in the same form and quantity in which he sold the same, as charged in said indictment, and in no other form, or package, or quantity, and that he has done no other act or sold any other spirituous or intoxicating liquors than such as he has paid a duty or tax upon to the government of the United States as aforesaid, all of which he is ready to verify.

And for further plea in this behalf the said defendant says that the Commonwealth ought to be barred from having and maintaining their said indictment in this case, because he says that by the Constitution of the United States, and also by the constitution of this Commonwealth, it is provided that excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted, and that the acts of the legislature upon which the indictment is founded imposes fine and punishment for an act which is not wrong in itself, and which fine and punishment is excessive, cruel, and unusual, and the said act of the legislature is unconstitutional and void, all of which he is ready to verify.

Wherefore he prays that the said Commonwealth from having and maintaining their said indictment in this case may be barred, and that he may have judgment and be hence discharged, &c.

By his attorney.

N. RICHARDSON.
A. F. L. NORRIS.

Filed July 12, 1866.

8 COMMONWEALTH OF MASSACHUSETTS, *Middlesex, to wit:*

At the superior court, begun and holden at Concord, within and for the county of Middlesex, on the fourth Monday of June, in the year of our Lord one thousand eight hundred and sixty-six, the jurors for the Commonwealth of Massachusetts on their oath present that Christopher Armstrong, of Lowell, in the county of Middlesex, at said Lowell, on the first day of June, in the year of our Lord one thousand eight hundred and sixty six, and on divers other days and times between that day and the day of finding this indictment, without then, and on said other days and times there having any license, appointment, or authority first duly had and obtained according to law, to keep intoxicating liquors for sale, and without then and on said other days and times there having any license, appointment, or authority first duly had and obtained according to law, to keep intoxicating liquors for sale, and without then and on said other days and times there having any license, appointment, or authority first duly had and obtained according to law to sell intoxicating liquors, did then and on said other days and times at Lowell aforesaid keep and maintain a certain common nuisance, to wit: a tenement in said Lowell, then and on said other days and times there used for the illegal sale and illegal keeping of intoxicating liquors, to the great injury and common nuisance of all the peaceable citizens of said Common-

wealth there residing, inhabiting, and passing against the peace and dignity of said Commonwealth, and contrary to the form of the statute in such case made and provided.

A true bill:

HENRY C. ROLFE,
Foreman of the Grand Jury.
I. S. MORSE,
District Attorney.

9 And now the said Christopher Armstrong is set to the bar, and has this indictment read to him. He says thereof he is not guilty, and for trial puts himself upon the country. A jury is therefore empannelled and sworn to try the issue, who, after hearing and understanding all matters and things concerning the same, return their verdict, and upon oath say that thereof the said Christopher Armstrong is guilty. It is therefore, on this eighteenth day of July, A. D. 1866, considered by the court that said Christopher Armstrong be punished to pay a fine of fifty dollars and costs, and by imprisonment three months in the house of correction, all of which appears of record of said court.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Concord, in said county, this 18th day of July, eighteen hundred and sixty-six.

[SEAL] JNO. JAS. SAWYER, *Ass't Clerk.*

Filed 14th January, 1867.